

IP 05-0406-M 1 KPF US v Mendez
Magistrate Kennard P. Foster

Signed on 10/27/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CAUSE NO. IP05-0406M-01
DORILLIAN LOPEZ MENDEZ,)	
)	
Defendant.)	

ENTRY AND ORDER OF DETENTION PENDING INDICTMENT AND TRIAL

SUMMARY

Dorillian Lopez Mendez (hereinafter “Lopez”) is charged in a Complaint that was filed October 18, 2005, with trafficking in counterfeit immigration and social security documents, in violation of 18 U.S.C. § 1028(a). On October 21, 2005, at the initial appearance, the government moved for detention pursuant to 18 U.S.C. § 3142(f)(2)(A), on the grounds that Defendant poses a serious flight risk.

A preliminary hearing and a detention hearing were held on October 26, 2005. The United States appeared by Assistant United States Attorney Mark S. Massa. Mr. Lopez appeared in person and by his appointed counsel, William Dazey. An interpreter was sworn, translating the proceedings from English to Spanish for the Defendant. The preliminary examination resulted in Mr. Lopez being held to answer in the District Court on the charges in the Complaint. Regarding detention, the government established by clear and convincing evidence, predicated upon the facts surrounding the arrest of Mr. Lopez on August 3, 2005, in Columbus, Indiana, Mr. Lopez’s criminal history and record and, most importantly, his

immigration status (that he is a citizen of Mexico with family there and in the United States illegally) and frequent use of aliases, that no condition or combination of conditions will reasonably assure Mr. Lopez's appearance as required. The Court thus ordered that Mr. Lopez be detained.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1. Mr. Lopez is charged in this cause by a Complaint filed on October 18, 2005, supported by the Affidavit of United States Postal Inspector William Birkofer. The Complaint charges Mr. Lopez with trafficking in counterfeit immigration, social security and other fraudulent forms of government identification, in violation of 18 U.S.C. § 1028(a).

2. The maximum penalties for violating 18 U.S.C. § 1028 include 15 years' incarceration, 3 years of supervised release, and a fine of \$250,000.

3. The Court takes judicial notice of the Complaint and the Affidavit In Support of the Complaint. The Court further incorporates the evidence admitted during the preliminary examination and detention hearing, as if set forth herein.

4. The government submitted the matter on preliminary examination on the Complaint and the Affidavit. Counsel for Mr. Lopez cross-examined Special Agent Marcy A. Ralston, Social Security Administration, Office of Inspector General, who had provided much of the evidence contained in Inspector Birkofer's Affidavit. Mr. Lopez presented no evidence on the issue of probable cause.

5. The Court finds probable cause that Mr. Lopez committed the offense with which he is charged in the Complaint and holds him to answer in District Court.

6. The government submitted the matter on detention on the Complaint, Affidavit, and Court's Exhibit 1, as well as on the testimony of Agent Ralston regarding fraudulent identification cards found in a search of Defendant's truck and not mentioned in the Affidavit, his multiple arrests for drunk driving in Bartholomew County, Indiana, and use of aliases. Counsel for the defendant proffered evidence that the Defendant had been employed in various businesses in the Columbus area, and confirmed that Lopez's family, including his mother and father, live in Chetunal, Mexico.

7. The Court admitted as Court's Exhibit 1 the Pre-Trial Services Report prepared by the U.S. Probation Office on the issue of Mr. Lopez's release or detention. Neither party objected to the admission of Court's Exhibit 1.

8. The credible evidence presented by the government at the hearing, and Court's Exhibit 1, established the following facts:

a. The Arrest of Mr. Lopez

On August 3, 2205, Columbus, Indiana, police, using information from a confidential informant and from one Francisco Sanchez Perez, a defendant in a related case, obtained a search warrant for 2831 Rosewood Lane in Columbus. The defendant, Dorillian Lopez Mendez, and his brother, Alonso Lopez Mendez, were arrested during the execution of the warrant. Perez picked Dorillian Lopez Mendez out of a photo array as the person from whom the confidential informant purchased fake ID cards the day before with his assistance. The search of the trailer at 2831 Rosewood Lane in which the Lopez brothers resided yielded several items known to be associated with illegal document manufacturing, including 130 blank social security cards, 130 blank U.S. Department of Justice Resident Alien cards and approximately 75 blank Mexican driver's licenses. Also seized was equipment used to

manufacture fake documents, including a 100-count box of plastic laminating pouches, electric typewriter, ink pad, two packages of perforated business card stock, cutting table, razor blades, scissors, glue and trimmings that appeared to be discarded from the manufacturing process. Also located was a Virginia resident identification card with Dorillian Lopez Mendez's picture and bearing the name "Jose Jiminez."

b. Mr. Lopez's Criminal History

Mr. Lopez's criminal history, as far as it could be determined given his illegal immigration status and use of aliases, appears to include a November 2004 conviction in the Commonwealth of Virginia for driving while intoxicated. Agent Ralston also testified that she was informed by Lopez's probation officer in Bartholomew County on the morning of the hearing that Lopez has been convicted of the same crime three times in that county, though the Government offered no records to corroborate that testimony.

9. Mr. Lopez qualifies for a detention hearing upon the government's motion that he poses a serious risk of flight. 18 U.S.C. § 3142(f)(2)(A).

10. The evidence relevant to the factors set forth in 18 U.S.C. § 3142(g) requires that Mr. Lopez be detained as there is no condition or combination of conditions of release sufficient to reasonably assure that he will appear as required for further proceedings.

Therefore, Mr. Lopez is ORDERED DETAINED.

11. When evaluating the question of pretrial detention, the Court engages a two-step analysis: first, the Court determines whether one of six conditions exists for considering a defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *See United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988). A defendant may be considered for pretrial detention in only six circumstances: when a

case involves one of either four types of offenses or two types of risks. A defendant is eligible for detention upon motion by the United States in cases involving: (1) a crime of violence; (2) an offense with a maximum punishment of life imprisonment or death; (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more; or (4) any felony where the defendant has two or more federal convictions for the above offenses or state convictions for identical offenses. *See* 18 U.S.C. § 3142(f)(1). A defendant is eligible for detention upon motion by the United States or the Court *sua sponte* in cases involving: (5) a serious risk that the person will flee; or (6) a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *See* § 3142(f)(2); *United States v. Sloan*, 820 F. Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. *See* 18 U.S.C. §3142(e). The judicial officer determines the existence of these conditions by a preponderance of the evidence. *Friedman*, 837 F.2d at 49. *See also United States v. DeBeir*, 16 F. Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F. Supp. 260, 265 (W.D. N.Y. 1998) (same). In this case, the United States has argued for detention pursuant to 18 U.S.C. § 3142(f)(2)(A). The Court has found that the government satisfied its burden of establishing that this basis exists.

12. Once it is determined that a defendant qualifies under any of the six conditions set forth in Section 3142(f), the court may order a defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. *See* 18 U.S.C. § 3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *See United States v. Fortna*, 769 F.2d 243, 249 (5th Cir.

1985). With respect to reasonably assuring the appearance of the defendant, the United States bears the burden of proof by a preponderance of the evidence. *See United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Himler*, 797 F.2d 156, 161 (3d Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S. Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2d Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F. Supp. 591, 596 (N.D. Ind. 1987).

13. The standard for pretrial detention is “reasonable assurance”; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the defendant’s appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

14. The Court further considers the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community are the weight of the evidence, the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S.Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

15. In this regard, the Court finds and concludes that the evidence in this case demonstrates the following:

a. As detailed in the Complaint and Affidavit, probable cause exists that Mr. Lopez has engaged in the illegal trafficking of counterfeit immigration, social security and other government identification documents, in violation of 18 U.S.C. § 1028(a).

b. The evidence presented demonstrates a high probability that Mr. Lopez will be convicted of the charged offense.

c. The evidence demonstrates that Mr. Lopez has been arrested in multiple jurisdictions using multiple aliases. The evidence demonstrates a probability that he is a substance abuser. He is a citizen of another country in the United States illegally with a substantial incentive to flee and avoid prosecution. His lack of local ties is self-evident. He has disregarded the law on multiple occasions. If released, he likely will not follow the law or the conditions of pre-trial release. Mr. Lopez presents a serious, indeed severe, risk of flight.

The Court, having weighed the evidence regarding the factors found in 18 U.S.C. § 3142(g), and based upon the totality of evidence set forth above, concludes, by clear and convincing evidence when the Government's burden is only by a preponderance, that there is a serious risk the Defendant would flee if released, and that there is no condition or combination of conditions of release sufficient to reasonably assure that he will appear as required for further proceedings.

WHEREFORE, Dorillian Lopez Mendez is hereby remanded to the custody of the United States Marshal pending further proceedings before the Court.

Dated this ____ day of October, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court

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